



Toni
Bandrowicz/R1/USEPA/US

11/25/2005 10:55 AM

To Joel Blumstein/R1/USEPA/US@EPA, Denny
Dart/R1/USEPA/US@EPA, Steven
Couto/R1/USEPA/US@EPA, Edie
Goldman/R1/USEPA/US@EPA
cc Samir Bukhari/R1/USEPA/US@EPA, David
Pincumbe/R1/USEPA/US@EPA, Joanna
Jerison/R1/USEPA/US@EPA, Mary
Medeiros/R1/USEPA/US@EPA, Amelia
Katzen/R1/USEPA/US@EPA

bcc

Subject **CONFIDENTIAL: Agreement in Principle in Brockton MA
CWA Judicial Case**

CONFIDENTIAL - ENFORCEMENT SENSITIVE

I spoke to Barbara Healy Smith (AUSA) this morning. Brockton's attorney called her back this past Weds. to say that the City is agreeable to the counterproposal we put on the table as outlined below. The City did not want the US or Commonwealth to announce the settlement yet, however, as they are in the process of negotiating with the contract operator on its contribution to the penalty.

As previously noted, the injunctive relief and boilerplate portion of a CD had already been agreed to by the parties and recent negotiation including EPA's counteroffer had concerned the penalty / SEP. The parties still need to memorialize the agreement in principle on the penalty / SEP but I am hoping that we can get agreement on specific language and then circulate a settlement package for signature before the end of the year.

Should I set up an internal Regional briefing on the proposed settlement? If so, pls. let me know if you want to attend the briefing and, if so, your availability the next two weeks.

Thanks.

Summary of Brockton agreement in principal

In short, under the terms of the agreement in principle (which we have explained is subject to approval by upper management at both the US and Commonwealth), the City is required to pay a total penalty of \$300,000. (The bottom-line penalty in the litigation report was \$190,000.) Of this amount, \$120,000 will be paid in cash, split evenly between the federal and state governments (the MA DEP and MA AG's office have been instrumental in successfully resolving this case and the federal and state government have enjoyed a very cooperative working relationship throughout the negotiation of this case). The cash component (\$120,000) is above 60% of the bottom line as required by the CWA policy. The remaining \$180,000 will be in the form of three SEPs.

1. The City will undertake a post-upgrade water quality assessment of the Salisbury Plain River to determine if more treatment (especially with respect to phosphorus) may be necessary in the future. The cost of this project will be \$80,000. Such a study is not required by the City's permit. Aside from providing important water quality information, this project will lead to a settlement of a citizen's appeal of the City's recently reissued NPDES permit. While the enforcement case team has not been involved in the permit appeal negotiations, the citizens have informed EPA's permit staff that they will withdraw the permit appeal if the City agrees to undertake the post-upgrade water quality assessment as an SEP. (Note that in order to settle the permit appeal, the citizens want and the City is willing to install UV instead of traditional disinfection. This will be included in the CD but will not be an SEP.)

2. The City will undertake a program to investigate whether there is lead in the drinking water of the City's schools and, possibly also day care facilities, in accordance with protocols

developed by the MA DEP drinking water office, which protocols were also reviewed by EPA's drinking water office. Any problems that are uncovered are required to be addressed under state law. The cost of this project will be \$25,000. The nexus of this project concerns removal of lead from water supply before it is discharged as wastewater to the treatment plant. We intend to continue to work closely with the state and federal drinking water offices on this aspect of the settlement.

3. Finally, the City will contribute \$75,000 to the Old Colony Planning board specifically earmarked for a study to investigate alternative regional wastewater treatment options for the communities in

Southeastern Massachusetts. Many of the surrounding communities do not have their own treatment plants and, in order to accommodate growth and development, have expressed either a desire to tie into Brockton's treatment plant (or, in the case of Whitman and Abington, to increase their allowable flow to the Brockton plant). This issue was raised at the Brockton permit hearing by the surrounding communities and their political representatives. It is not feasible, however, for Brockton to take additional flows due to the limited capacity of the plant even after the upgrade but more importantly because of the limitations on pollutant loadings that can be discharged to a low flow river such as the Salisbury Plain River. Therefore, alternative regional treatment options must be investigated, such as decentralized treatment units that discharge to the ground.

Under the injunctive relief provisions of the CD, Brockton has already agreed to undertake a number of construction projects to upgrade its POTW and rehabilitate its collection system totaling approximately \$ 61 million, all according to a specific schedule. Instead of waiting for settlement of the civil judicial case, the Region had issued an administrative order to Brockton requiring the City to take immediate steps to remedy operations and maintenance problems in the existing treatment plant and to also begin the initial steps to upgrade the plant. The City completed the steps in the administrative order and has begun the actual work on the upgrade. Under the CD, the upgrade will be completed by February, 2009. While some of the compliance due dates in CD have passed, the City has been complying with the CD's terms and has met all the CD's due dates thus far.

The CD also requires Brockton to rehabilitate the collection system to reduce extraneous flows. Once Phase II of the project is completed, the City is required to develop specific interim effluent limits which will remain in effect until completion of the projects, until that time, interim operational practices are required. Should the City fail to comply with the terms of the CD, it is subject to stipulated penalties which will be evenly split between the federal and state governments.